

MANDATE

14-2550-cv

Authors Guild, Inc. v. Bass

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals
for the Second Circuit, held at the Thurgood Marshall United
States Courthouse, 40 Foley Square, in the City of New York,
on the 25th day of June, two thousand fifteen.

PRESENT: DENNIS JACOBS,
GUIDO CALABRESI,
GERARD E. LYNCH,
Circuit Judges.

- - - - -X
AUTHORS GUILD, INC.,
Plaintiff-Appellee,

-v.-

14-2550-cv

EMILY M. BASS,
Appellant,

REED ELSEVIER, DOW JONES REUTERS
BUSINESS INTERACTIVE, LLC, d/b/a
FACTIVA, DIALOG CORP., THOMSON CORP.,
GALE GROUP INC., WEST PUBLISHING CO.,
PROQUEST LLC, NEWSBANK, INC., THE NEW
YORK TIMES CO., UNION TRIBUNE
PUBLISHING CO., KNIGHT-RIDDER, INC.,
MEDIASTREAM, INC., DOW JONES &

1 COMPANY, INC., EBSCO INDUSTRIES,
2 INC., KNIGHT RIDDER DIGITAL,
3 Defendants.*

4 - - - - -X

5
6 **FOR APPELLANT:** EMILY M. BASS, pro se, Law
7 Offices of Emily M. Bass, New
8 York, New York.

9
10 **FOR APPELLEE:** SPENCER HOSIE (Diane S. Rice,
11 Hosie Rice LLP, San Francisco,
12 California, Michael J. Boni,
13 Boni & Zack LLC, Bala Cynwyd,
14 Pennsylvania, A.J. De
15 Bartolomeo, Girard Gibbs LLP,
16 San Francisco, California, Gary
17 S. Fergus, Law Office of Gary
18 Fergus, San Francisco,
19 California, on the brief), Hosie
20 Rice LLP, San Francisco,
21 California.

22
23 Appeal from a judgment of the United States District
24 Court for the Southern District of New York (Daniels, J.).

25
26 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED**
27 **AND DECREED** that the order of the district court be
28 **AFFIRMED.**
29

30 Emily M. Bass, a lawyer appearing pro se, appeals from
31 the order of the United States District Court for the
32 Southern District of New York (Daniels, J.), granting
33 plaintiffs' motion for attorney's fees and dismissing
34 objections. Bass appeals from the denial of a fee award
35 premised on work she did on another case, which allegedly
36 paved the way for a successful settlement of this case. We
37 assume the parties' familiarity with the underlying facts,
38 the procedural history, and the issues presented for review.

39
40 We review a district court's award of attorney's fees
41 for abuse of discretion. In re Bank of Am. Corp. Sec.,
42 Deriv., & ERISA Litig., 772 F.3d 125, 134 (2d Cir. 2014).

* The Clerk of Court is respectfully directed to amend
the official caption in this case to conform with the
caption above.

1 "Indeed 'abuse of discretion'--already one of the more
 2 deferential standards of review--takes on special
 3 significance when reviewing fee decisions." Goldberger v.
 4 Integrated Res., Inc., 209 F.3d 43, 47 (2d Cir. 2000). A
 5 district court abuses its discretion if its decision rests
 6 on an error of law or a clearly erroneous factual finding,
 7 or "cannot be located within the range of permissible
 8 decisions." McDaniels v. Cnty. of Schenectady, 595 F.3d
 9 411, 416 (2d Cir. 2010) (citation and internal quotation
 10 marks omitted). Similarly, a district court's allocation of
 11 fees among different attorneys is reviewed for abuse of
 12 discretion. Rein v. Socialist People's Libyan Arab
 13 Jamahriya, 568 F.3d 345, 350 (2d Cir. 2009).

14
 15 The parties agreed upon a \$2.7 million pool of fees for
 16 A/B Class Counsel, to be split among the three lead counsel
 17 and distributed from lead counsel to non-lead counsel in
 18 accordance with lodestar calculations. The pool represents
 19 a significant discount from the lodestars, and amounts to
 20 approximately 15% of the value of the settlement fund.
 21 Lodestars represent a "presumptively reasonable" fee, see
 22 Millea v. Metro-North R. Co., 658 F.3d 154, 166 (2d Cir.
 23 2011) (internal quotation marks omitted), and here 15% is a
 24 reasonable percentage of recovery, cf. Cent. States Se. &
 25 Sw. Areas Health & Welfare Fund v. Merck-Medco Managed Care,
 26 L.L.C., 504 F.3d 229, 249 (2d Cir. 2007).

27
 28 The district court found both the amount and allocation
 29 to be fair and reasonable, and ordered the fees to be paid
 30 in accordance with this arrangement. Bass complains that a
 31 draft of the settlement agreement gave lead counsel
 32 discretion to allocate fees, but that provision did not
 33 govern how the final fee proposal was formulated or what the
 34 district court ordered. See Victor v. Argent Classic
 35 Convertible Arbitrage Fund L.P., 623 F.3d 82, 90 (2d Cir.
 36 2010). Accordingly, Bass's contention that the district
 37 court divested itself of authority to determine fees is
 38 meritless.

39
 40 Bass's principal contention is that the district court
 41 erred in refusing to award her fees in this case for her
 42 work in Tasini v. New York Times Co., a separate, albeit
 43 related, case that had settled previously. See 206 F.3d 161
 44 (2d Cir. 2000), aff'd, 533 U.S. 483 (2001). This contention
 45 rests on two arguments, both meritless. First, Bass argues
 46 that her work in Tasini is compensable in this case because
 47 Tasini established a favorable precedent. We have already

1 rejected the "novel assertion that attorneys who are
2 victorious in one case may, like the holder of a copyright,
3 claim fees from all subsequent litigants who might rely on
4 or use it in one way or another." Cranston v. Hardin, 504
5 F.2d 566, 580 (2d Cir. 1974). Second, Bass argues that the
6 settlement agreement in Tasini contemplated that she would
7 be further compensated in this case. But the attorney's
8 fees award in this case did not belong to the Tasini parties
9 and was not theirs to allocate. The district court properly
10 declined to include Bass's Tasini work in the fee
11 allocation.
12

13 Bass also argues that the value of her contributions to
14 the class action itself--specifically, her initiative in
15 adding unregistered copyright holders to the plaintiff
16 class--entitles her to compensation at a premium beyond her
17 lodestar. We have previously recognized a court's
18 discretion to use the lodestar method to allocate attorney's
19 fees among counsel without reference to the subjective
20 quality of their work. See Victor, 623 F.3d at 88; see also
21 Rein, 568 F.3d at 355. Furthermore, the district court in
22 this case rejected Bass's assertion that she made any
23 uniquely valuable contributions to the lawsuit, a factual
24 finding that precludes Bass from demanding a premium based
25 on the quality of her services. See In re Agent Orange
26 Prod. Liab. Litig., 818 F.2d 216, 222 (2d Cir. 1987).
27

28 Bass challenges the district court's lodestar
29 calculations on a number of grounds, all meritless. Among
30 other objections, she protests that the hours claimed by
31 lead counsel were not supported by contemporaneous time
32 records, as ordinarily required. See Scott v. City of New
33 York, 626 F.3d 130, 133-34 (2d Cir. 2010). But lead counsel
34 maintained and offered to provide to the district court
35 contemporaneous time records; and the time summaries they
36 did provide were based on those records, which totaled
37 hundreds of pages. The district court did not abuse its
38 discretion in relying on the summaries rather than the
39 records on which they were based. See Cruz v. Local Union
40 No. 3 of Int'l Bhd. of Elec. Workers, 34 F.3d 1148, 1160-61
41 (2d Cir. 1994) ("A review of the submissions made by
42 [counsel] shows that they made contemporaneous entries as
43 the work was completed, and that their billing [summary] was
44 based on these contemporaneous records. We believe this
45 falls sufficiently within the meaning of
46 'contemporaneous.'").
47

1 For the foregoing reasons, and finding no merit in
2 Bass's other arguments, we hereby **AFFIRM** the order of the
3 district court.
4

5 FOR THE COURT:
6 CATHERINE O'HAGAN WOLFE, CLERK
7




A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit


